

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDRE ANTROBUS,

Plaintiff,

-v-

WARDEN OF GRVC AND THE CITY OF NEW
YORK,

Defendants.
-----X

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DOC # _____
DATE FILED: 6/25/12

11 Civ. 5128 (JMF)

MEMORANDUM OPINION
AND ORDER

JESSE M. FURMAN, District Judge:

On April 30, 2011, Andre Antrobus, an inmate at the George R. Vierno Center (“GRVC”) on Rikers Island, filed a complaint, pursuant to Title 42, United States Code, Section 1983, alleging that poor prison conditions caused him emotional distress, mental anguish, and physical injury. (Compl. ¶¶ II(D), III (Docket No. 2)). Defendants moved to dismiss the complaint on February 21, 2012. (Docket No. 9).

In an Opinion and Order filed on May 25, 2012, the Court granted the Defendants’ motion to dismiss on the ground that Antrobus had failed to exhaust his claims as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). (See May 25, 2012 Opinion and Order (“Opinion”) (Docket No. 16)). In the Opinion and Order, the Court noted that Antrobus had failed to file any papers in opposition to the motion to dismiss, although it examined the merits of Antrobus’s claims notwithstanding the lack of any opposition to the motion. (Opinion at 2). On May 29, 2012, judgment was entered dismissing Antrobus’s case. (See Clerk’s Judgment (Docket No. 17)).

By letter dated June 5, 2012, defense counsel advised the Court that, on May 23, 2012 (two days before the Court issued its Opinion and Order), it had received a set of undated papers from Antrobus that appeared to be in opposition to their motion to dismiss. (Defense counsel was apparently on vacation from May 23, 2012 to June 4, 2012.) Antrobus never filed the papers directly with the Court. Nor do the papers themselves make reference to being filed with the Court.

On June 6, 2012, the Court directed the Clerk of the Court to reopen the case and ordered Defendants to address whether the Court should consider the plaintiff's undated papers and, if so, what effect, if any, those papers would have on the Court's May 25, 2012 Opinion and Order. (*See* June 6, 2012 Order (Docket No. 19)).

On June 8, 2012, Antrobus filed a notice of appeal to the United States Court of Appeals for the Second Circuit from the Court's May 29, 2012 Judgment. (Docket No. 20). The Supreme Court has held that "[t]he filing of a notice of appeal is an event of jurisdictional significance — it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Holmes Group, Inc. v. Vornado Air Circulation Sys.*, 535 U.S. 826, 835 (2002) (quoting *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). Similarly, the Second Circuit has noted that the docketing of a notice of appeal "ousts the district court of jurisdiction except insofar as it is reserved to it explicitly by statute or rule." *Toliver v. County of Sullivan*, 957 F.2d 47, 49 (2d Cir. 1992); *see also United States v. Camacho*, 302 F.3d 35, 36 (2d Cir. 2002) (per curiam) (explaining an exception to the general rule that a notice of appeal divests the district court of jurisdiction).


Here, there are no special circumstances mandating an exception to the general rule that the filing of the notice of appeal strips this Court of jurisdiction. Accordingly, Antrobus's June

8, 2012 notice of appeal has rendered the questions posed in the Court's June 6, 2012 Order moot. This Court no longer has jurisdiction to consider those aspects of the complaint involved in the appeal. *See Holmes Group* 535 U.S. at 835.

The Clerk of the Court is directed to close the case.

SO ORDERED.

Dated: June 25, 2012
New York, New York



JESSE M. FURMAN
United States District Judge

A copy of this Memorandum Opinion
and Order has been mailed to:

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AMKC
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